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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

November 6, 2015 - 1:00 p.m.
Public Utilities Commission
21 South Fruit Street Suite 10
Concord, New Hampshire

DAY 2

IN RE: SEC DOCKET NO. 2015-01
Request of SEA-3, Inc.,
for an Exemption from
the Application and
Certification Requirements
of RSA 162-H.
(Hearing on the Settlement
Agreement and Deliberations)

SUBCOMMITTEE: Alexander F. Speidel, Esq. (NH PUC)
(Designated as Presiding Officer)

John Duclos, Designee (NH DES)

Roger Hawk, Public Member

ALSO PRESENT: Pamela G. Monroe, Administrator (NH SEC)

Michael J. Iacopino, Esq. (Brennan...)
(Counsel to the Committee)

COURT REPORTER: Steven E. Patnaude, LCR No. 52

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APPEARANCES :

Reptg. SEA-3, Inc.

Alec L. McEachern, Esq.
Jacob J.B. Marvelley, Esq.
(Shaines & McEachern, PA)

Reptg. Counsel for the Public:

Peter Roth, Esq.
Senior Asst. Atty. General
N.H. Attorney General's Office

Reptg. the City of Portsmouth:

Jane Ferrini, Esq.

Reptg. the City of Dover:

Anthony I. Blenkinsop, Esq.

Reptg. the Town of Newington:

John J. Ratigan, Esq. (Donahue, Tucker)

Reptg. the Portsmouth Intervenors Group:

Christopher Cole, Esq.

Reptg. the Great Bay Stewards:

Fred Mason
Laura Byergo

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P R O C E E D I N G

(Hearing commenced at 2:33 p.m.)

PRESIDING OFFICER SPEIDEL: Good afternoon, everyone. I would like to welcome you all to the continuation of the public hearing for the Request for Exemption from SEA-3, Incorporated, filed in SEC Docket Number 2015-01.

The Subcommittee understands that there has been a submission of a final executed version of the Settlement Agreement reached in principle yesterday. And, I understand that it has been provided to the court reporter, is that correct?

(Mr. Patnaude indicating in the affirmative.)

PRESIDING OFFICER SPEIDEL: He nods "yes". And, therefore, I would request that this be marked as Hearing Exhibit 2 for this proceeding.

*(The document, as described, was herewith marked as **Hearing Exhibit 2** and entered as a full exhibit.)*

PRESIDING OFFICER SPEIDEL: Excellent. Already accomplished. Thank you, Mr. Patnaude.

I think, before we begin our deliberations regarding this Settlement Agreement, I would

1 like to give the opportunity to my colleagues on the
2 Subcommittee to ask questions of representatives of the
3 various Parties that have reached this agreement. And,
4 also, I'd like to invite the various Parties that reached
5 this agreement to make public statements, if they so
6 desire.

7 So, therefore, I will open the floor to
8 my colleagues, Mr. Duclos and Mr. Hawk. Do you have any
9 questions regarding this Agreement?

10 MR. DUCLOS: Thank you for providing the
11 letter May 21st, 2014 from the Town of Newington that's
12 referenced in this Agreement.

13 I only had one question in regards to
14 Paragraph 3. Second to the last sentence, where the "Fire
15 Departments from all communities" are "being invited". I
16 just want to ensure that the obligation to invite the Fire
17 Departments is on SEA-3 to do the invitations?

18 MR. BOGAN: We will do that, yes.

19 PRESIDING OFFICER SPEIDEL: Is that all?

20 MR. DUCLOS: That's all. Thank you.

21 PRESIDING OFFICER SPEIDEL: Mr. Hawk, do
22 you have any questions that you'd like to ask?

23 MR. HAWK: I don't think so, at this
24 time.

1 PRESIDING OFFICER SPEIDEL: Thank you,
2 Mr. Hawk.

3 Are there any members of the various
4 Parties here today or other members of the public that
5 would like to make public statements regarding the
6 Settlement Agreement?

7 *[No verbal response]*

8 PRESIDING OFFICER SPEIDEL: All right,
9 hearing none.

10 MR. IACOPINO: All right. I have a
11 couple of questions, Mr. Chairman. I'll start with Mr.
12 McEachern.

13 Mr. McEachern, I assume that SEA-3 feels
14 that, with the Settlement Agreement -- that, with the
15 conditions contained in the Settlement Agreement, that the
16 existing state and federal statutes and state and federal
17 regulations, as well as local ordinances, will adequately
18 protect the objectives of RSA 162-H?

19 MR. McEACHERN: That is correct,
20 Mr. Iacopino.

21 MR. IACOPINO: And, I assume that SEA-3
22 takes the position that the objectives of the statute are
23 met by the designated agencies, particularly those
24 contained within the Agreement?

1 MR. McEACHERN: That is correct.

2 MR. IACOPINO: And, I assume that SEA-3
3 takes the position that the response of the general public
4 indicates that those agencies can meet the objectives of
5 RSA 162-H?

6 MR. McEACHERN: That is correct.

7 MR. IACOPINO: And, also, that all
8 environmental impacts are adequately regulated by the
9 various federal, state, and local agencies, and by the
10 conditions contained in the Agreement, is that correct?

11 MR. McEACHERN: That is also correct.

12 MR. IACOPINO: Okay. I would turn to
13 Counsel for the Public. Do you agree with those
14 statements as well?

15 MR. ROTH: Mr. Iacopino, Mr. Chairman,
16 Counsel for the Public believes that the Settlement
17 Agreement is the resolution of disputed facts, and that we
18 don't take a position on those disputed facts at this
19 time. The Settlement Agreement resolves those disputed
20 facts in a way that gets the exemption. But I'm not going
21 to take a position on whether the elements have been met
22 or could have been met.

23 MR. IACOPINO: Let me go to Mr. Ratigan.
24 Mr. Ratigan, what's the position of the Town of Newington?

1 MR. RATIGAN: The Town of Newington
2 agrees.

3 MR. IACOPINO: I'll go to Ms. Ferrini,
4 from Portsmouth. What's the position of the Town of
5 Portsmouth -- City of Portsmouth?

6 MS. FERRINI: The City of Portsmouth has
7 formally withdrawn its intervention motion, and agrees
8 with the terms of the Settlement Agreement. Insofar as
9 those terms relate to 162-H and the various federal,
10 state, and local ordinances referenced in the Settlement
11 Agreement, the City agrees that it complies.

12 MR. IACOPINO: Thank you. How about the
13 City of Dover?

14 MR. BLENKINSOP: Thank you. Anthony
15 Blenkinsop, for the City of Dover. Yes, the City of Dover
16 intervened in this matter and objected to the exemption.
17 The City of Dover believes that the terms of this
18 Settlement Agreement address the concerns the City of
19 Dover had. And, therefore, if this is granted, the City
20 of Dover obviously withdraws its objection.

21 MR. IACOPINO: And, I'll go to Mr. Cole,
22 with respect to the Portsmouth Intervenors.

23 MR. COLE: Mr. Chairman, Mr. Iacopino,
24 we believe the Settlement is reasonable and meets the

1 objectives of the intervenors when they intervened and
2 opposed the exemption. They believe that a withdrawal of
3 their opposition to the exemption on the carrying out of
4 the conditions and undertakings in this memorandum
5 constitute a reasonable compromise of their claim, and
6 they're very, very happy with it.

7 MR. IACOPINO: And, now, I'm going to
8 turn to Mr. Mason, because it's a little bit different
9 issue. You signed on this Agreement, is that correct?

10 MR. MASON: That is correct.

11 MR. IACOPINO: And, is it your intention
12 to withdraw your objections as well as part of that
13 signing?

14 MR. MASON: That is correct.

15 MR. IACOPINO: Okay. I'll ask you the
16 same questions then that I asked the others. Do you
17 believe that the Agreement meets those statutory criteria
18 that I went through with Mr. McEachern?

19 MR. MASON: And, the Great Bay Stewards
20 is here represented *pro se*, without legal counsel. I do
21 not believe that we can opine as to your question. We
22 have dropped our objection. Thank you.

23 MR. IACOPINO: Thank you. All right. I
24 have no further questions.

1 PRESIDING OFFICER SPEIDEL: Very well.
2 Having heard no willingness on the part of the Parties to
3 make statements regarding the Settlement Agreement, I
4 would ask that we now begin our deliberations, which I
5 understand are entered into in the full view of all the
6 Parties to this proceeding. And, do I hear any objection
7 to that from my fellow Subcommittee members?

8 MR. DUCLOS: I have no objection.

9 MR. HAWK: No objection.

10 **D E L I B E R A T I O N S**

11 PRESIDING OFFICER SPEIDEL: Thank you,
12 gentlemen. I will begin. I'm very pleased that the
13 Parties to this proceeding have entered into this
14 Settlement Agreement. I believe that it represents a fair
15 compromise regarding various issues of concern to the
16 various Parties, municipalities, nonprofit organizations,
17 SEA-3, itself, the movant in this case. And, I think,
18 this is my own opinion, I think it shows a willingness on
19 the part of the various Parties to cooperate and to act in
20 the mutual best interests of the State of New Hampshire
21 and public safety and environmental protection in a way
22 that recognizes that SEA-3 has maintained a sterling
23 public record of safety over its last 40 years of
24 operation.

1 And, that the overall area in which
2 SEA-3 operates, which we know as the "Seacoast Region", is
3 a very special place. It is a very exciting tourist
4 destination, an economic development center these days,
5 but it also is, and has been for nearly 400 years, a
6 working port area, an industrial area of our state. And,
7 when you have a working railroad, a working port,
8 industrial occupancy of a site that actually is our number
9 one tourist destination I'd be willing to bet, you have to
10 have a balancing of interests and a recognition of the
11 fact that everyone needs to be a good neighbor.

12 And, what I see in this Settlement
13 Agreement is that SEA-3 is willing to enter into a
14 Settlement Agreement that shows that it's going to
15 continue being a good neighbor of these communities. And,
16 the various communities in the Seacoast Region are saying
17 to each other "we're going to cooperate on what's of
18 common interest in this Settlement Agreement."

19 So, I'd like to mention that I think
20 that, again, the fact that the Parties entered into this
21 Agreement is an indication that SEA-3 has had a sterling
22 safety record, but it also bears a great amount of the
23 public trust and the public confidence in its ongoing
24 operation.

1 I believe that we can approve this
2 Settlement Agreement and grant the exemption request,
3 insofar as I understand and have confidence that Mr. Bogan
4 and the personnel at SEA-3 are going to continue to
5 operate their facility according to the highest standards
6 of public safety and engineering and management practices.
7 I think that's implicit in the Settlement Agreement that
8 the other Parties to this case have come to an agreement
9 on the basis that that high level of professionalism will
10 continue.

11 And, I am appreciative of the fact that
12 we had a rail study, at the request of the Counsel of the
13 Public, it provided useful information to this
14 Subcommittee. We have confidence that there's a margin of
15 safety in the operation of the railroad, which is of
16 concern to the communities surrounding the SEA-3
17 installation itself, that there is a speed limit of 10
18 miles per hour, and that the railroad is in good working
19 condition.

20 Therefore, I would say, in summation,
21 that I would support the approval of the exemption request
22 at this time, on the basis of the undertakings entered
23 into in the Settlement Agreement by the various Parties,
24 including the movant party, SEA-3. And, that there be a

1 clear understanding, as expressed yesterday by the
2 witnesses that were sworn, that this is a conditional
3 approval by the Subcommittee, subject to revocation if the
4 terms of the Settlement Agreement are not met.

5 Therefore, it is the expectation of the
6 Subcommittee that the Municipalities and other Parties to
7 this Agreement will be proactive in reaching out to the
8 Site Evaluation Committee if any of these conditions are
9 modified or changed.

10 I thank all of the Parties again for
11 collaborating fruitfully over the last couple of days on
12 this Agreement. And, I recommend that my fellow
13 Subcommittee members vote to approve this. Thank you.

14 Mr. Duclos.

15 MR. DUCLOS: I, too, am very pleased
16 with the cooperation of the Seacoast communities. I think
17 it's very important to have a working port and an adequate
18 supply of propane. Given the transportation issues we had
19 by road last year, and the exclusion to allow the
20 transportation by road, and that's dangerous. I think of
21 the rail, having really one of only two facilities on the
22 East Coast to be serviced by rail is an important part of
23 what Newington is doing here to have a facility that would
24 operate a lot better than it has in the past four years,

1 given the supply that's available in United States propane
2 from Pennsylvania, and taking advantage of the rail line
3 to the facility.

4 I also like the cooperation by the
5 Chiefs, and looking at this facility in the future, and
6 having a successful operation for many years to come.

7 I would also encourage that we support
8 the exemption from the Committee members.

9 PRESIDING OFFICER SPEIDEL: Mr. Hawk.

10 MR. HAWK: I would support the comments
11 just made, and make a motion that we grant the request for
12 the exemption and hope that the terms of this Agreement
13 come to pass.

14 PRESIDING OFFICER SPEIDEL: Very good.
15 I would second that motion, that we take up the approval
16 of the exemption.

17 MR. DUCLOS: I would support that and
18 agree.

19 PRESIDING OFFICER SPEIDEL: I vote for
20 the approval of the exemption effective immediately.

21 MR. DUCLOS: I as well.

22 MR. HAWK: I as well.

23 PRESIDING OFFICER SPEIDEL: Thank you
24 very much. So ordered. There will be an order explaining

1 our reasoning in due course. Thank you very much for your
2 time.

3 Do we have any other orders of business,
4 Mr. Iacopino?

5 MR. IACOPINO: I don't think so.

6 PRESIDING OFFICER SPEIDEL: Thank you
7 very much. Have a good afternoon, everyone, and safe
8 travels. Bye-bye.

9 MR. McEACHERN: Thank you, Mr. Chairman.

10 MS. FERRINI: Thank you.

11 MR. ROTH: Thank you.

12 MR. BLENKINSOP: Thank you.

13 ***(Whereupon the hearing was adjourned at***
14 ***2:47 p.m.)***

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